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8 Attorneys for Defendant CONSECO SENIOR HEALTH INSURANCE COMPANY

9 **UNITED STATES DISTRICT COURT**

10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

11 PAMELA THOMPSON, Individually )	CASE NO.: C 07-05437 PJH
12 and as Personal )	[Sonoma County Superior
13 Representative of CHARLES )	Court Case No. 241544]
14 THOMPSON, Deceased, )	
15 Plaintiff, )	<b>JOINT CASE MANAGEMENT</b>
16 vs. )	<b>STATEMENT/Joint SCHEDULING</b>
17 CONSECO SENIOR HEALTH )	<b>CONFERENCE REPORT PURSUANT</b>
18 INSURANCE COMPANY, a )	<b>TO RULE 26(f)</b>
19 Pennsylvania corporation, )	
20 DOES 1 through XX )	Case Management Conf.:
21 )	1/31/08
22 )	
23 )	Assigned to the Honorable
24 )	Phyllis J. Hamilton
25 )	
26 )	
27 )	
28 )	

20 **TO THE COURT AND TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF**  
 21 **RECORD HEREIN:**

22 The parties to the above-entitled action jointly submit this  
 23 Joint Case Management Statement/Joint Scheduling Conference  
 24 Report pursuant to Rule 26(f) and request the Court to adopt it as  
 25 its Case Management Order in this case.

26 **1. Jurisdiction and Service:**

27 The basis for subject matter jurisdiction in this diversity

1 action is that it is an action between a plaintiff resident of  
 2 California and defendant corporation located in Pennsylvania. The  
 3 amount in controversy, exclusive of interest and costs, exceeds  
 4 the sum of \$500,000.00.

5 **2. Facts:**

6 Plaintiff Pamela Thompson, suing in her own capacity, and as  
 7 a representative of Charles Thompson, deceased, alleges, among  
 8 other things, that defendant wrongfully deprived her of long term  
 9 care benefits under a long term care insurance issued by  
 10 Transport Life Insurance Company in 1992, which was assumed by  
 11 defendant Conseco Senior Health Insurance Company. She has sued  
 12 Conseco Senior on various causes, seeking to recover policy  
 13 benefits, general damages, emotional distress damages, attorneys  
 14 fees and punitive damages. Defendant denies that it has  
 15 wrongfully deprived plaintiff of long term care benefits on this  
 16 policy, or otherwise engaged in wrongful conduct toward  
 17 plaintiff, and deny that plaintiff is entitled to damages for  
 18 failure to provide benefits under the policy, damages for  
 19 emotional and mental distress, interest, punitive damages,  
 20 attorneys fees, costs of suit, or any other damages.

21 **3. Legal Issues:**

22 The principal legal issues which the parties dispute:

23 Whether defendant breached the insurance contract, and  
 24 the nature and extent of the damages plaintiff is entitled to  
 25 recover if it is determined that there was such a breach.

26 Whether defendant breached the implied covenant of good  
 27 faith and fair dealing and the nature and extent of the damages  
 28 plaintiff is entitled to recover if it is determined that there

1 was such a breach.

2           Whether defendant breached Welfare and Institutions  
 3 Code §§15600 et. seq. and the nature and extent of the damages  
 4 plaintiff is entitled to recover if it is determined that there  
 5 was such a breach.

6           Whether plaintiff suffered mental and/or emotional  
 7 distress as a result of defendant's conduct and the nature and  
 8 extent of any such mental and/or emotional distress.

9           Whether plaintiff is entitled to recover attorneys  
 10 fees, and the amount of any such fees.

11           Whether, by clear and convincing evidence, defendant  
 12 acted with malice, oppression or fraud, entitling plaintiff to  
 13 punitive damages, and the amount of any such damages.

14           **4. Motions:**

15           Defendant filed a motion to dismiss that was heard by this  
 16 court on December 19, 2007. Defendant further anticipates that it  
 17 will file additional motions including a motion to dismiss  
 18 regarding plaintiff's first amended complaint and a motion for  
 19 summary judgment.

20           **5. Amendment of Pleadings:**

21           Plaintiff has filed a first amended complaint pursuant to  
 22 court order.

23           **6. Evidence Preservation:**

24           The parties have taken steps to preserve evidence relevant  
 25 to the issues reasonably evident in this action.

26           **7. Disclosures:**

27           The parties certify that the parties have served the  
 28 following initial disclosures:

6 (2) a copy of, or a description by category and  
7 location of, all documents, data compilations, and tangible  
8 things that are in the possession, custody, or control of the  
9 party and that the disclosing party may use to support its claims  
10 or defenses, unless solely for impeachment;

11 (3) a computation of any category of damages claimed  
12 by the disclosing party, making available for inspection and  
13 copying as under Rule 34 the documents or other evidentiary  
14 material, not privileged or protected from disclosure, on which  
15 such computation is based, including materials bearing on the  
16 nature and extent of injuries suffered; and

## 8. Discovery:

The parties agree to the following discovery plan:

24 (A) Per Plaintiff: Plaintiff anticipates taking the  
25 deposition of the person most knowledgeable, Interrogatories,  
26 Request for Documents, and Request for Admission.

27 (B) Per Defendant: Defendant anticipates serving  
28 written discovery on plaintiff including interrogatories,

1 document requests and admissions, subpoenaing records relating to  
 2 the plaintiff from health care providers, and others, and taking  
 3 the depositions of plaintiff, plaintiff's health care providers,  
 4 and other witnesses.

5 (C) The parties agree that Discovery should not be  
 6 conducted in phases.

7 (D) The parties agree that Discovery should be limited  
 8 to or focused upon the particular issues reasonably related to  
 9 the claims and defenses advanced by the parties, that no changes  
 10 should be made in the limitations on Discovery imposed by the  
 11 FRCP or by local rule, and that no other limitations on Discovery  
 12 should be imposed.

13 (E) The parties anticipate that they will be better  
 14 able to formulate and simplify the issues and eliminate any  
 15 frivolous claims or defenses prior to the date set for trial.

16 (F) The parties anticipate that they will be  
 17 better able to obtain admissions of fact and of documents which  
 18 will avoid unnecessary proof, stipulations regarding the  
 19 authenticity of documents, and advance rulings from the court on  
 20 the admissibility of evidence, during discovery and prior to the  
 21 date set for trial.

22 (G) Expert Disclosures: During the FRCP 26(f)  
 23 Conference of the Parties, it was agreed that Experts will be  
 24 disclosed pursuant to FRCP 26(a)(2)(C) [at least 90 days before  
 25 the trial date], and that expert reports will not be required,  
 26 pursuant to FRCP 26(a)(2)(B).

27 As the parties have agreed that expert reports under  
 28 FRCP 26(a)(2)(B) will not be required, the parties have further

1 agreed that only expert witness declarations by the parties'  
2 attorney will be provided which must include the following  
3 information:

4 (a) A brief narrative statement of the qualifications  
5 of the expert;

6 (b) A brief narrative statement of the general  
7 substance of the testimony that the expert is expected to give;

8 (c) A representation that the expert has agreed to  
9 testify at trial;

10 (d) A representation that the expert will be  
11 sufficiently familiar with the pending action to submit to a  
12 meaningful oral deposition concerning the specific testimony,  
13 including any opinion and its basis, that the expert is expected  
14 to give at trial; and

15 (e) A statement of the expert's hourly and daily fee  
16 for providing deposition testimony and for consulting with the  
17 retaining attorney.

18 The parties agree that the above manner of designating  
19 experts will better serve the litigation as both parties focus  
20 both their time and financial resources toward possible  
21 settlement rather than on the prohibitive cost and effort  
22 required for preparation of an expert report under FRCP  
23 26(a) (2) (B) .

24 **9. Class Actions:**

25 Not applicable.

26 **10. Related Cases:**

27 Not applicable.

28 **11. Relief:**

1 (A) Plaintiff is entitled to damages for failure to provide  
2 benefits under the policy, damages for emotional and mental  
3 distress, interest, punitive damages, attorneys fees, costs of  
4 suit, or any other damages.

5 (B) Defendant disputes that plaintiff is entitled to the  
6 damages alleged and the amount.

## 12. Settlement and ADR:

8 \_\_\_\_\_ Plaintiff and Defendants select ADR L.R. Procedure No. 6  
9 (Mediation with a court appointed mediator).

With respect to prospects of settlement and proposed date of compliance with the mediation procedure, it is the position of both plaintiff and defendant that the parties will have to engage in some initial discovery in order to properly value the case and that they can then discuss settlement. The parties suggest a six month deadline to participate in the ADR settlement procedure.

13. Consent to Magistrate Judge For All Purposes:

17 \_\_\_\_\_The parties do not consent to have a magistrate judge  
18 conduct all further proceedings including trial and entry of  
19 judgment.

#### 14. Other References:

21 || Not applicable.

## 15. Narrowing of Issues:

23 None at the present time.

#### 16. Expedited Schedule:

25 || Not applicable.

## 17. Scheduling:

27 \_\_\_\_\_ Completing Discovery: As this matter is currently in the  
28 preliminary stages of discovery, it is requested that adequate

1 time be allowed for the discovery stage as many of the suggested  
 2 deponents are out of state. Defendants and Plaintiff propose  
 3 that the discovery cut-off date, including expert discovery,  
 4 should be December 31, 2008.

5         Hearing Dispositive Motions: Plaintiff and Defendants  
 6 propose that the last day for hearing dispositive motions shall  
 7 be January 26, 2009. Defendants anticipate filing a motion for  
 8 summary judgment/adjudication.

9         Pre-trial Conference and Trial dates: Plaintiff and  
 10 Defendant proposes that the Pre-trial conference shall be set  
 11 for February 27, 2009, and Trial shall be set for March 18, 2009.

12         **18. Trial:**

13         Both Plaintiff and Defendant have requested that the case be  
 14 tried before a jury. Both Plaintiff and Defendant estimate that  
 15 the entire trial should take 5-7 days.

16         **19. Disclosure of Non-party Interested Entities or Persons:**

17         As to defendant: Pursuant to Civil Local Rule 3-16, the  
 18 undersigned, counsel of record for Defendant Conseco Senior  
 19 Health Insurance Company, certifies that as of this date, other  
 20 than the named parties, there is no such interest to report.  
 21 These representations are made to enable the Court to evaluate  
 22 possible disqualification or recusal.

23         As to plaintiff: Pursuant to Civil Local Rule 3-16, the  
 24 undersigned, counsel of record for Plaintiff PAMELA THOMPSON  
 25 certifies that as of this date, other than the named parties,  
 26 there is no such interest to report. These representations are

27

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1  
2 made to enable the Court to evaluate possible disqualification or  
3 recusal.

4

5 DATED: 1/24/08

LAW OFFICES OF JOHN E. HILL

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7 By: /S/ MICHAEL P. GUTA  
MICHAEL P. GUTA  
8 Attorney for Plaintiff, ANITA  
D. PARATLEY

9

10 DATED: 1/24/08

LAW OFFICES OF MARC J. WODIN

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12 By: /S/ MARC J. WODIN  
MARC J. WODIN  
13 Attorneys for Defendant,  
CONSECO SENIOR HEALTH INSURANCE  
COMPANY

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